

Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID "KING" BEASLEY,
Plaintiff,

vs.

MAGIC TOYOTA OF LYNNWOOD d/b/a
INXS Inc., a Washington Corporation;
MICHAEL'S TOYOTA, a Washington
Corporation; any and all successor
corporations; DAVID BROADUS; KEITH
MAYERNIK; PETER CHUNG; AND JESS
HANSEN, and their marital communities,

Defendants.

NO. CV 05-1895 RSM

ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM

JURY DEMAND

Defendants I N X S, Inc. d/b/a/ Magic Toyota of Lynwood, Michael's Toyota, David Broadus, Keith Mayernik, Peter Chung, and Jess Hansen, and their marital communities (collectively "these Defendants") answer plaintiff David "King" Beasley's Complaint for Damages and assert the following affirmative defenses and counterclaim.

I. PARTIES, JURISDICTION, AND VENUE

1. Admit.
2. Admit.
3. Admit.
4. Denied.

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ANSWER, AFFIRMATIVE DEFENSES, AND
COUNTERCLAIM - 1
(W.D. Wash. Cause No. CV05-1895RSM)

LEE·SMART·COOK·MARTIN & PATTERSON

P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

5. Denied, except admit only insofar as that David Broadus owns 100% of the shares of I N X S, Inc. d/b/a Magic Toyota of Lynnwood.

6. Denied.

7. Admit.

8. Admit.

9. Admit only insofar as that David Broadus owns 100% of the shares of I N X S, Inc. d/b/a Magic Toyota of Lynnwood.

10. Denied.

11. These Defendants admit that plaintiff alleges a violation of 42 U.S.C. § 1981, which forms the basis for federal question jurisdiction; however, these Defendants expressly deny any and all allegations that the alleged violation occurred.

II. FACTUAL ALLEGATIONS

12. Admit.

13. Admit.

14. Denied.

15. Admit only insofar as that plaintiff was not promoted while employed at Magic Toyota; however, these Defendants deny any other allegations that may be contained or implied in this paragraph.

16. Denied.

17. Denied.

18. Admit only insofar as that Peter Chung became General Manager of Magic Toyota in February 2002.

19. Deny any and all allegations in this paragraph, except admit only insofar as that Peter Chung did conduct sales meetings on a regular basis which were attended by sales staff in which he, among other things, taught sales techniques.

1 20. Deny any and all allegations that suggest that there were any discriminatory
 2 actions taken by these Defendants. However, admit only insofar as that in the one sales
 3 meeting alleged by plaintiff, Mr. Chung, without racial or discriminatory intent, may have
 4 used the general phrase “lets call a spade a spade” meaning solely “it is what it is,” without
 5 any derogatory or racial meaning or intent, and it was not directed at plaintiff.

6 21. Denied.

7 22. Denied.

8 23. Denied.

9 24. Denied.

10 25. Denied.

11 26. Admit only insofar as that, on June 10, 2004, an incident occurred in which
 12 plaintiff fell down toward the floor when he sat on his chair, but caught himself before
 13 striking the floor. These Defendants deny any other allegation that may be contained or
 14 implied in this paragraph.

15 27. Admit. Tom Wong’s employment was immediately terminated.

16 28. Admit only insofar as that L&I found that some injuries noted by the plaintiff
 17 were related to plaintiff’s industrial injury, others claimed injuries were found by L&I not to
 18 be related to this industrial injury. In regard to plaintiff’s allegation of “constant pain,” these
 19 Defendants currently lack sufficient information or belief to admit or deny the allegations
 20 contained therein and therefore deny the same. These Defendants deny any other allegation
 21 that may be contained or implied within this paragraph.

22 29. Denied.

23 30. Denied.

24 31. Denied.

25 32. Denied.

33. Denied.

34. Denied.

III. CAUSES OF ACTION

1. Denied.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

IV. PLAINTIFF'S PRAYER FOR RELIEF

Defendants deny each and every paragraph of the plaintiffs' prayer for relief contained plaintiff's Complaint.

V. COUNTERCLAIM FOR FRIVOLOUS LAWSUIT

By way of counterclaim, these Defendants bring a cause of action for a frivolous lawsuit against plaintiff, pursuant to RCW 4.84.185 and Fed. R. Civ. P. 11. The evidence will clearly show that plaintiff's claims are wholly without merit, which any reasonable inquiry would have exposed. Due to the unjustified over zealousness, these Defendants have been forced to incur legal expenses and costs of litigation in the defense against these frivolous allegations and, pursuant to RCW 4.84.185 and Fed. R. Civ. P. 11, these Defendants are entitled to recover from plaintiff and his legal counsel their attorneys' fees, legal expenses, and costs of litigation.

VI. AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER, and without admitting any matters previously denied, Defendants allege the following affirmative defenses:

1. No Discrimination. Plaintiff's claims are barred because these Defendants acted at all times in good faith and did not discriminate against plaintiff on the basis of race.

2. Failure to State a Claim. Plaintiff fails to state a claim for each individual claim upon which relief can be granted.

3. Limitation of Actions. The statute of limitations bars some or all of plaintiff's claims.

4. Washington Industrial Insurance. To the extent that the plaintiffs' injuries are the result of an industrial accident due to negligence or gross negligence, they are within the exclusive jurisdiction of Washington Industrial Insurance Act ("IIA") laws, and plaintiff has waived any right to proceed based upon his option to proceed under the IIA.

5. Comparative Fault of Plaintiff. Plaintiff's damages, if any, were proximately caused by the negligence or fault of Plaintiff.

6. Comparative Fault of Third Parties. Plaintiff's damages, if any, were proximately caused by the negligence or fault of third parties.

7. Independent Medical Conditions. Plaintiff's damages, if any, were proximately caused by a pre-existing bodily condition of the Plaintiff.

8. Failure to Mitigate. Plaintiff has failed to mitigate his damages.

9. Allocation of Fault. Defendants are entitled to an allocation of fault and a determination of the proportionate share of fault of others for alleged damages on which recovery is sought.

1 10. Entitlement to Offset. Defendants are entitled to an offset for any advance
2 payment of funds by these Defendants to Plaintiff.

3 11. Defendant Good Faith. Defendants at all times acted in good faith.

4 12. Laches. Plaintiff has delayed in bringing allegations of what he now claims
5 were wrongs in order to create a cause of action rather than eliminate discrimination, if any.

6 13. Intervening or Superseding Cause. Plaintiff's damages, if any, were caused by
7 an intervening cause, which was a superseding cause of the alleged damages.

8 14. Failure to Notify. Plaintiff failed to adequately and timely inform Defendants
9 regarding the nature of his claims of discrimination.

10 15. No Right to Specific Supervisor. Disability discrimination case law states that
11 an employer is under no obligation to provide a different supervisor more to plaintiff's liking
12 as a method of accommodation.

13 16. No violation of 42 U.S.C. § 1981. No defendant was involved in a violation of
14 42 U.S.C. § 1981.

15 17. Improper Entity Named: Michael's Toyota and I N X S, Inc. d/b/a Magic
16 Toyota of Lynwood are two separate corporate entities. Plaintiff has improperly named
17 Michael's Toyota as a party, although there is no relationship between plaintiff and Michael's
18 Toyota that would give rise to any cause of action by plaintiff against Michael's Toyota.

19 18. Collateral Estoppel: Some or all of plaintiff's injuries have been determined
20 by an administrative tribunal to have been caused by events other than those complained of in
21 plaintiff's complaint, thereby barring plaintiff from asserting the contrary pursuant to issue
22 preclusion/collateral estoppel.

VII. RESERVATION OF RIGHTS

Defendants hereby reserve the right to amend this Answer by way of adding affirmative defenses, counter claims, cross claims, or third party claims as the existence of such claims is discovered in the future.

VIII. DEFENDANTS' PRAYER FOR RELIEF

Having answered Plaintiff's Complaint, Defendants pray for judgment as follows:

- a. For plaintiff's Complaint to be dismissed with prejudice;
- b. For Defendants to be awarded their reasonable attorneys' fees and taxable costs incurred in defending this cause pursuant to all applicable law, including but not limited to, RCW 4.84.185, Fed. R. Civ. P. 11, and 42 U.S.C. § 1988;
- c. For such other relief as this court may deem just and equitable.

DATED this 12th day of December, 2005.

LEE SMART COOK MARTIN &
PATTERSON, P.S., INC.

By: /s/ Michael A. Patterson
Michael A. Patterson, WSBA No. 7976
Daniel G. Lloyd, WSBA No. 34221
Of Attorneys for Defendants
Magic Toyota Of Lynnwood, *et al.*
1800 One Convention Place, 701 Pike Street
Seattle, WA 98101
Phone: (206) 262-8305, Fax: (206) 624-5944
map@leesmart.com; dgl@leesmart.com

LAW OFFICES OF DAN'L W. BRIDGES

By: /s/ Dan'L W. Bridges
Dan'L W. Bridges, WSBA No. 24179
Of Attorneys for Defendants
Magic Toyota Of Lynnwood, *et al.*
11100 NE 8th St Ste 300
Bellevue, WA 98004-4477
Phone: (425) 818-4880, Fax: (425) 818-4882
dbridges@danbridges-law.com

CERTIFICATE OF SERVICE

I hereby certify that on the date provided below, I electronically filed ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individual:

Mr. Stephen A. Teller
Teller & Associates
1139 34th Ave Ste A
Seattle, WA 98122
Phone: (206) 324-8969
Fax: (206) 860-3172
steve@stellerlaw.com

Mr. Mark Dietzler
Vandeberg Johnson & Gandara
1201 Pacific Ave., Ste. 1900
Tacoma, WA 98401-1315
Phone: (253) 383-3791
Fax: (253) 383-6377 (fax)
mdietzler@vjglaw.com

I certify under penalty of perjury that the foregoing is true and correct.

Dated at Seattle, Washington, this 12th of December, 2005.

By: /s/ Daniel G. Lloyd
Daniel G. Lloyd, WSBA No. 34221
Lee Smart Cook Martin & Patterson, P.S., Inc.
1800 One Convention Place, 701 Pike Street
Seattle, WA 98101
Phone: (206) 262-8305, Fax: (206) 624-5944
dgl@leesmart.com